

## **COLORADO MEDICAL BOARD**

### **FULL BOARD OPEN MINUTES**

**August 19, 2010**

**9:03 a.m.**

A Full Board meeting of the Colorado Medical Board was held Thursday, August 19, 2010, at 1560 Broadway, Conference Room 1250C, Denver, Colorado at 9:03 a.m. The meeting was noticed in accordance with Division policy.

Present were Dr. Allen-Davis (arrived at 12:10 p.m.), Mr. Berson, Dr. Butler, Dr. Calonge (arrived at 9:05 a.m.), Dr. Groce (arrived at 11:50 a.m.), Ms. Hewitt (departed at 11:15 a.m.), Mr. Jennings (arrived at 9:05 a.m.), Mr. Kirkpatrick, Dr. Matthews, Dr. Melendez, Dr. Overholt (arrived at 9:12 a.m.), Mr. Schoenmakers (departed at 11:30 a.m.), Dr. Utt and Dr. Watts.

The meeting was conducted by Dr. Watts and Dr. Allen-Davis.

Also in attendance for all or part of the meeting were Rose McCool, Director, Division of Registrations, Richard Morales, Healthcare Section Director; and Board staff Marschall S. Smith, Program Director, Lisa Jackson, Enforcement Program Manager, Maria Soto, Program Assistant; Claudia Brett Goldin, First Assistant Attorney General.

### **MINUTES**

A motion was made, seconded, and carried to approve the open minutes of the May 20, 2010 full board meeting and the open minutes of the June 22, 2010 special full board rulemaking meeting as presented.

### **REPORTS**

#### **President's Report**

Dr. Allen-Davis congratulated Dr. Calonge for his new position as President of the Colorado Trust Foundation.

#### **Section Director's Report**

Richard Morales provided the Board an update regarding the upcoming appointments of new Board members.

#### **Program Director's Report**

Marschall S. Smith introduced the following new Board members:  
Eric Ryan Groce, D.O. and Kyle Kirkpatrick, P.A.-C

## **GENERAL BUSINESS**

### **EMTS-MDC Recommendations for Rule 500 Waivers**

Arthur Kanowitz, M.D., Medical Director, Emergency Medical & Trauma Services (EMTS) Section, and Randy Kuykendall, Head of the Emergency Medical & Trauma Services at the Colorado Department of Public Health and Environment were present at the meeting to discuss Medical Direction Committee (MDC) Rule 500 Waiver recommendations.

After discussion, motions were made, seconded and carried to adopt the EMTS-MDC recommendations for Rule 500 waiver requests. Specifically, separate motions were made, seconded, and carried to approve renewal of waivers: 09-22, 09-25, 09-26, 09-32, 09-38, 09-39, 09-41, 09-42, 10-10, 10-12, 10-13 (Dr. Overholt abstained), 10-14, 10-15, 10-16, 10-18, 10-19, 10-20, 10-21, 10-22, 10-23, 10-24, 10-25, 10-26, 10-27, 10-28, 10-29, 10-30 and 10-31. A motion was made, seconded and carried to deny waivers: 10-09 and 10-17 (Dr. Phelps abstained and Dr. Calonge opposed the denial of waiver 10-17). A motion was made, seconded and carried to table waiver 10-32.

### **CPHP Report, Fouth Quarter, Report ending July 31, 2010 and Annual Report for period from July 1, 2009-June 30, 2010.**

The Board reviewed the July 31, 2010 FourthQuarter Report and the Annual Report for period from July 1, 2009-June 30, 2010.

A motion was made, seconded and carried to accept both reports.

### **Rule 400 - Request for Waiver of the Board Rule Regarding the Regulation of Physician Assistants**

#### **Dan Smilkstein, M.D.**

The Board reviewed a waiver request regarding the on-site supervision of a new Physician Assistant (PA) graduate for the PA's first 1000 working hours.

A motion was made, seconded and carried to deny Dr. Smilkstein's request.

### **Review of 2011 Meeting Calendar**

The Board reviewed the 2011 Board and Panel meeting calendar.

A motion was made, seconded and carried to accept the calendar.

### **Request for a Declaratory Order from Janet T. Thornton, D.O.**

The request was withdrawn at the request of Dr. Thornton.

### **Presentation from Marjie Harbrecht, CEO of Health Team Works**

This presentation was postponed until the November 18, 2010 meeting.

**Motion to enter Executive Session**

A motion was made, seconded and carried to enter into Executive Session at 11:40 a.m. The motion was remade at 11:50 a.m., after the Board noticed that the recorder was not on, for the purpose of conferring with counsel for the Board to receive legal advice on specific legal questions, pursuant to Colorado Revised Statutes section 24-6-402(3)(a)(II), specifically:

Advice related to whether an opt-out is consistent with state law and how to answer Governor Ritter's letter to the Medical Board regarding opt-out.

At 1:31 p.m., the Board's discussion in Executive Session was concluded and the Board returned to open session.

**Centers for Medicare and Medicaid Services letter regarding Certified Registered Nurse Anesthetists from Governor Bill Ritter, Jr.**

The Board reviewed a letter from Governor Ritter and engaged in a discussion to answer the two questions asked by the Governor.

The Board also provided time to the public for comments which were supplement the written materials previously supplied to the Board. The following people presented their arguments to the Board either in favor or against the opt-out option, listed as the information appears on the public sign in sheet.

- Lou Ann Wilroy
- Herman Schrevigil
- Doug Warneche
- Daniel Janik
- Linda Siderius – CNA
- Scott Shaffer/HRRMC
- Kari Hershey/CMS
- Ed Finley
- Randy Clark
- Janet Stephens – CHA
- Fred Yu
- Alex Shackey

The following members of the public did not meet the criteria to present to the Board and were not permitted to present.

- Rachel Saul – Medical Student
- Debbie Wagner

After discussion and due consideration of the written materials provided and testimony presented, a motion was made, seconded and carried that the Board would

decline to comment on legal issues outside its jurisdiction. The motion carried by a vote of 11 in favor and 2 opposed. Dr. Overholt and Dr. Melendez opposed the motion. Ms. Hewitt and Mr. Shoenmakers were not available for the vote.

A second motion was made, seconded and carried that a decision by the Governor to opt out of the physician supervision requirement would not violate the Medical Practice Act, so long as the opt-out does not violate the Nurse Practice Act. The motion carried by a vote of 8 in favor and 5 opposed. Mr. Jennings, Dr. Matthews, Dr. Melendez, Dr. Overholt, and Dr. Phelps opposed the motion. Ms. Hewitt and Mr. Shoenmakers were not available for the vote.

A third motion was made, seconded and carried that a decision by the Governor to opt out of the physician supervision requirement for Colorado's rural and critical access hospitals would be in the best interest of the people of Colorado. The motion carried by a vote of 7 in favor and 6 opposed. Mr. Kirkpatrick, Dr. Matthews, Dr. Melendez, Dr. Overholt, Dr. Phelps, and Dr. Watts opposed the motion. Ms. Hewitt and Mr. Schoenmakers were not available for the vote.

**Rulemaking Hearing to Modify/Amend/Revise/Repeal CMB Rules:**

**PUBLIC RULEMAKING HEARING**

At 12:30 p.m. an announcement was made that, unless an objection was expressed, the rulemaking would start after conclusion of the General Business appearances. No objections were made.

A motion was made, seconded and carried to convene the public rulemaking hearing at 1:40 p.m. The Hearing was properly noticed under the provisions of the Administrative Procedure Act.

Dr. Allen-Davis presented an overview of the rules. A full opportunity was provided for submission of oral and written comments by the public. No written documents were offered or received in advance of or at the hearing. The Board also provided time to the public for comments. The following people presented, listed as the information appears on the public sign in sheet.

- Paul Docktor, M.D.

The public hearing portion of the Rulemaking was closed at 1:53 p.m.

After due consideration of the information provided and the testimony given, a motion was made, seconded and carried to adopt Rules 100, 110, 120, 130, 140, 200, 210, 220, 230, 260, 270, 280, 290, 300, 310, 320, 330, 340, 350, 360, 380, 400, 410, 800, 900, and 950 as revised.

A second motion was made, seconded and carried to repeal Rules 150, 155, 500 and 700.

A motion was made, seconded and carried to adopt Rule 295 with revisions.

#### **Discussion and Review of Board Policies**

After due consideration, a motion was made, seconded and carried to repeal Board Policies 20-07, 20-08 and 20-10 effective immediately.

After due consideration, a motion was made, seconded and carried to repeal Board Policies 40-01, 40-15, and 40-16 effective January 1, 2011.

After due consideration, a motion was made, seconded and carried to accept Board Policy 10-11 as amended.

After due consideration, a motion was made seconded and carried to table Board Policies 40-07 and 40-08 for review and discussion at the November 2010 meeting.

After due consideration, a motion was made, seconded and carried to adopt Board Policy 30-04 as presented.

#### **ALLEGATIONS OF UNLICENSED PRACTICE OF MEDICINE 2009**

##### **Vera Karpova**

The Board reviewed staff memo.

After discussion, a motion was made, seconded and carried to dismiss the complaint.

##### **Office of Investigations Report**

The Board reviewed a report from Glenn Frank, Investigator dated May 29, 2010 regarding MedExpress, case # 2010-001798F.

After careful consideration, a motion was made, seconded and carried to dismiss this case.

##### **Office of Attorney General**

The Office of Attorney General's Confidential Full Board Case Status Report was provided to the Board for review. The report was for the Board's information and no action required.

**ITEMS OF INTEREST**

**OTHER ITEMS OF INTEREST**

The Board reviewed a letter from Marschall S. Smith, Program Director requesting the assistance of NPATCH. No action was required.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 4:07 p.m.

*Approved by: Jandel Allen-Davis, M.D.*

*Date: November 18, 2010*